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## **Tax Compliance Tips for Restaurant Managers**

The sales tax requirements for restaurants can be confusing. When you are trying to serve hundreds of customers, the last thing you need to have on your mind is when, if, and how sales tax applies. To help you better understand the rules pertaining to sales tax in restaurants, here are some frequently asked questions and answers, as well as available resources from the State Board of Equalization (BOE) to assist you in determining your sales tax requirements and how to maintain records. Please remember that other government agencies may have different recordkeeping requirements.

**Q: What is the purpose of keeping proper business records?**

A: You need to keep proper business records so the BOE may verify the accuracy of your sales and use tax returns. You want to make sure you pay only the correct amount of tax.

**Q: What basic types of records am I required to maintain?**

A: You should keep all records required to determine the proper amount of tax you may owe. This includes, but is not limited to: normal books of account showing your business income and expenses; documents of original entry, such as invoices, receipts, job orders, purchase orders, contracts, or other documents you use as the basis for your books of account; and all schedules or working papers you use in preparing your sales and use tax returns.

**Q: What type of information should my records include?**

A: Your records should include information establishing: the gross receipts from all of your business income, including sales, leases, service charges, and labor income; all of the deductions you claim on your sales and use tax returns along with supporting documents for those deductions; and the total purchase price of all items you bought to sell, lease, use, keep, or give away.

**Q: Are there additional records that would be helpful in determining an accurate assessment of reported sales for a restaurant?**

A: Yes. In addition to maintaining basic business records, you may want to consider:

- Keeping bar and restaurant receipts and purchases separate.
- Keeping a written record of policies regarding complimentary meals and drinks.

- Keeping all menus and other documents indicating pricing. Also, be sure to keep evidence of any price changes, coupon programs, discount programs, bar “Happy Hours” pricing, bar glass sizes, or any other variations in pricing practices (e.g., advertisements, phone book directory inserts, coupons).
- Keeping a written record of the estimated amount of liquor served in cocktails.

**Q: How do I document a sale or purchase that is not subject to tax?**

A: You need to retain the basic records, such as resale certificates, exemption certificates, or other written records from a particular transaction, to document claimed nontaxable sales or purchases. If you do not keep these records and you cannot otherwise prove a sale was not taxable, you may be required to pay tax, interest, and penalty charges. In addition:

- If you purchase an item without paying tax because you intend to resell it as part of a taxable item, you need to give the seller a valid BOE resale certificate that includes: your name; address; seller’s permit number; the words “will be resold” or “for resale;” a description of the property; a purchase date; and your signature. You can download a sample resale certificate (Form BOE-230) from the BOE Web site: [www.boe.ca.gov](http://www.boe.ca.gov).
- If you rely on cash register receipts to separate taxable and nontaxable sales, be sure your register operators are trained and understand how to make sure the registers separate taxable and nontaxable sales.
- Get a valid resale certificate from the purchaser if the purchaser claims the item will be resold. You will owe the tax if you cannot prove the item was for resale.
- If you sell an item to a purchaser who gives you an out-of-state delivery address, you need to keep documentation, such as bills of lading or invoices showing the delivery address of the out-of-state shipment. If you know the purchaser has a California address, you need to obtain a signed written statement that the item will be used at a specific out-of-state location. You can download a sample statement (Form BOE-448, Statement of Delivery Outside California) from the BOE Web site: [www.boe.ca.gov](http://www.boe.ca.gov).

**Q: How does sales tax apply if I sell food “to-go”?**

A: If you sell food to-go, the following rules apply:

- Sales tax generally applies to food and beverages if they are served for consumption at your place of business. If you provide or the facility in which you are located provides tables, chairs, or counters for dining, or trays, glasses, dishes, or other tableware, the sales are generally subject to tax.
- If your location derives more than 80 percent of its gross receipts from food product sales and more than 80% of your food sales are taxable, the BOE’s “80/80 rule” makes all to-go sales taxable. (Sales of carbonated beverages and alcoholic beverages and sales of cold food to-go not suitable for immediate consumption should not be included for purposes of this computation.” However, you may make a special election with the BOE to separately account for “to-go” sales of cold food, hot bakery goods, and hot beverages for purposes of exempting such sales from tax.

- If your location is not subject to the 80/80 rule, then tax does not apply to to-go individual sales of cold food products, hot bakery goods, and hot beverages. However, if any of these items are sold as part of a combination package with one or more hot food items, tax applies to the entire selling price. If a combination package sold to-go includes cold food and a carbonated beverage, the portion of the selling price that represents the carbonated beverage is subject to tax.

**Q: Does sales tax apply to meals served in banquet rooms?**

A: If the restaurant does not break out a separately stated charge amount for meals only, then the entire amount of restaurant charges for the use of banquet rooms and other facilities where meals are served is taxable.

**Q: Does sales tax apply to rental charges for banquet rooms?**

A: No. A caterer's separately stated reasonable charge for rental of a facility where meals are served is not taxable.

**Q: How long should I maintain my records?**

A: You are required to hold sales and use tax records for at least four years unless the BOE gives you specific written authorization to destroy them sooner. If you are being audited, you should retain all records that cover the audit period until the audit is completely finished. If you have a disputed amount, you should retain the related records until that dispute is resolved. However, for reporting periods beginning before January 1, 2003, that are subject to the extended 10-year statute of limitations of the 2005 Tax Amnesty Program, records required to be retained must be kept for a period of not less than 10 years.

**Q: What should I expect if I am audited?**

A: If you are contacted by the BOE for review, the auditor will tell you the audit period, usually three years, and ask about your business operations, accounting methods, and the type of records kept. The auditor will also identify the records you should have ready for the audit. You must provide all relevant records to the auditor, who is required to keep them confidential.

The auditor usually starts the audit with a preliminary examination of your records. This examination gives the auditor an idea of the records available and procedures used to record your transactions. Based on a brief review of your records, the auditor may feel an audit is not needed. If this is the case, you will receive a notice waiving the audit. This notice does not constitute written advice that you are reporting tax correctly. If the preliminary tests indicate possible reporting errors, a more complete review may be required.

Audits are intended to ensure you pay only the correct amount of tax – no more, no less. Oftentimes, audits result in no change to tax liability, and some audits result in a refund.

**Q: What should I do if I did not keep all of the records I should have?**

A: If some essential records are not available, tell the auditor what records you do have. Sometimes, missing records may be reconstructed from information provided by suppliers or customers. The auditor should be able to assist you if you have any concerns.

**Q: What if I disagree with the audit results?**

A: If you disagree with the audit results, the auditor will generally defer preparing the final audit report until you have provided information to support your argument. You should clearly explain why you disagree and ask the auditor about the documentation you need to support your position.

**Available Resources**

- Publications and Forms: The following are free publications available at: [www.boe.ca.gov](http://www.boe.ca.gov):
  - **BOE Publication 22: *Tax Tips for the Dining & Beverage Industry***
  - **BOE Publication 42: *Resale Certificate Tips***
  - **BOE Publication 71: *California City and County Sales and Use Tax Rates***
  - **BOE Publication 76: *Audits***
  - **BOE Publication 101: *Sales Delivered Outside California***
  - **BOE Publication 103: *Sales for Resale***
  - **BOE Publication 116: *Sales and Use Tax Records***
  - **BOE Special Notice: *Tax Amnesty* (November 2005)**  
**Form BOE-230: *General Resale Certificate***  
**Form BOE-448: *State of Delivery Outside California***
- For Additional Information: To obtain further information, please call the BOE Information Center toll-free at 1-800-400-7115 or visit: [www.boe.ca.gov](http://www.boe.ca.gov).